



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No.499-98

16 May 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. The Board also considered the advisory opinion from the National Naval Medical Center, Behavioral Healthcare Clinic, Bethesda, MD, dated 15 February 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board noted that you initially petitioned the Board contending that the misconduct which led to your undesirable discharge was the result of brain damage you suffered from having a high fever associated with malaria. The details of your service and basis for the Board's initial denial of your application are set forth in the attached letter of 17 September 1993 and need not be reiterated.

Your case was accepted for reconsideration based on your contention that the 147 day period of unauthorized absence (UA), for which you requested discharge for the good of the service, was due to combat fatigue and the psychological evaluation showing that you have been diagnosed with post traumatic stress disorder (PTSD). In this connection, the Board substantially

concurred with the comments contained in the advisory opinion. The Board noted your service medical record contains no evidence of any mental disorders and the report of medical examination at the time of discharge shows no objective evidence of any psychiatric illness. While you have submitted evidence that you suffer from PTSD, the diagnosis indicates that the onset of the disorder was delayed. The earliest mention of PTSD in available records is February 1992, more than 20 years after your discharge.

The Board also noted four letters from relatives and friends who report that you were a functional person prior to serving in the Marine Corps but when you came back from Vietnam you were unable to function, either socially or professionally. You provide no evidence to support your claim of being a healthy individual prior to service such as school and employment records, or letters from clergy or school officials who knew you prior to service. Also conspicuously absent is any employment or medical history during the 20 plus years from April 1970, when you were discharged, until February 1992, when available medical records indicate you were first diagnosed with PTSD. While the Board does not doubt that you suffer from PTSD of some type, it was not persuaded that it rendered you incapable of distinguishing right from wrong or excused you of responsibility for your actions, then or now. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

National Naval Medical Center
Behavioral Healthcare Clinic
Bethesda, Maryland 20889-5600

February 15, 2000

From: CPT(P) William C. Keppler III, MC, USA
To: CAPT William Nash, Specialty Advisor for Psychiatry, Chief BUMED, Naval Hospital, San Diego, CA 92134-5000

Via: Chairman, Department of Psychiatry, NNMCM

Subj: APPLICATION FOR CORRECTION OF NAVAL RECORDS IN THE CASE
OF [REDACTED]

Ref: (a) 10 U.S.C. 1171
(b) Board for Corrections of Naval Records letter of 06 December 1999 to
Specialty Advisor for Psychiatry

Encl: (1) BCNR File
(2) Service Records
(3) Medical Records

1. Per your request for review of the subject's petition for a correction of his Naval records and in response to reference (b), I have thoroughly reviewed enclosures (1) through (3).
2. Review of available Navy medical records revealed:
 - a. SF 603, health record – dental at enlistment
 - b. SF 88, report of medical examination at enlistment. Significant for the absence of any active psychiatric disorders.
 - c. SF 89, report of medical history at enlistment. Significant for PV1 Nichols' claim of no personal or family history of mental illness prior to his enlistment.
 - d. SF 600, chronological record of medical care. First entry was 08 Sep 1967 and final entry was 12 Sep 1969. Entries of significance are *Apr 14, 1968*; evaluation for fever to 104.4 degrees, successfully treated with anti-pyretic medications over a period of 2 days, *May 05, 1968*; wound care to right leg, right forearm and forehead from a fragmentation injury, *Dec 20, 1968*; documentation of malaria prophylaxis, *Feb 07, 1969*; treatment for gonorrheal infection, *Sep 12, 1969*; medical record closed a patient was declared a deserter.
 - e. NAVPERS 755, records transmittal, dated 04 March 1970. Pt returned from U.A. status after over 140 days.
 - f. SF 88, report of medical examination at discharge dated 06 Mar 1970. Significant for the absence of any active psychiatric disorders.

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g. NAVMED 6150/3, sick call treatment record. First entry was 04 Mar 1970 and final entry was 14 Apr 1970. Significant for absence of any mention of psychiatric symptoms.

3. Review of the applicant's service record revealed:

a. [REDACTED] entered active duty on 05 Sep 1967 with the US Marine Corps, and did basic training in San Diego, California. He entered the marine corps with a 7th grade education, and low aptitude test scores. After basic, [REDACTED] was assigned to Marine Corps Base Camp Pendleton, California for advanced training (rifleman). On 16 Jan 1967, he was advanced to PFC. He began a tour in Vietnam on 21 Feb 1968. On 16 May 1968 he was wounded in action and awarded the Purple Heart. From June of 1968 until he finished his tour in Vietnam in March of 1969, the applicant received two NJP's, one for unauthorized absence (for a period of 7 days) and one for allowing the act of intercourse to be committed on post while the posted sentinel. He was reduced in rank to E-1, forfeited part of his pay and was sentenced to confinement at hard labor for two months as a result of these infractions.

b. [REDACTED] left Vietnam on 15 March 1969, returning to Camp Pendleton, California. On 07 Jul 1969, the applicant again went UA, this time for a seven day period. On 22 Jul 1969, the applicant was convicted of violating UCMJ article 86, and placed in a restricted status. On 12 Aug 1969, the applicant broke his restricted status, and again went UA, this time for a period of 147 days. He was apprehended, returned to the USMC on 08 Jan 1970. The applicant's service record reflects the USMC intent to court-martial him for desertion, and his request for discharge for the good of the service in order to escape trial. The applicant's request was honored, and he was discharged from the USMC on 28 Apr 1970 with an "undesirable" discharge.

c. [REDACTED] initially appealed to the board for corrections of naval records to have his discharge upgraded to honorable on 24 Aug 1992. His initial application stated that the behaviors which lead to his undesirable discharge were the result of "brain damage" he incurred after contracting malaria, and associated high fevers. On 17 Sep 1993, the board disapproved PV1 Nichols' application.

d. On 04 Mar 1996, [REDACTED] appealed the board's initial decision, this time claiming that the behaviors leading to his undesirable discharge were caused by combat-related Post Traumatic Stress Disorder (PTSD). On 10 Oct 1996, the board issued a letter stating that it would not consider his appeal because he submitted no appropriate documentation supporting his claim.

e. On 07 Nov 1997, [REDACTED] resubmitted his application to the board for upgrade of his discharge. Included with the package that time was Mr. Maxwell's reports, and four hand-written letters from relatives and friends subjectively reporting that [REDACTED] was a functional person prior to his marine corps service, and that since his return from Vietnam he has been non-functional, either socially or professionally.

4. Review of the VA file revealed:

a. Veterans Administration letter confirming receipt of application for benefits from [REDACTED] dated April 17, 1992.

b. VA form 10-1415, medical record problem list dated 11 Feb 1992. Significant for the mention of PTSD as problem #2. This is the first mention of PTSD in the applicant's medical record. There is no documentation supporting this diagnosis.

c. SF 509, Veterans Administration medical record progress notes. First entry was dated 11 Feb 1992 at 3:00 pm and the last entry was dated 02 Sep 1997. Significant entries record applicant's desire for correction to military records (wanted an upgraded discharge and VA benefits), documentation of hypervigilance, increased startle response, foreshortened future. Of note, there is no documentation that the patient was reexperiencing past traumas or was behaving in a manner that avoided stimuli associated with such trauma. In addition, this first documentation of PTSD-like symptoms was made during the applicant's first BCNR request.

d. Report of Psychological Evaluation Update by [REDACTED], Ed.D. dated October 11 and 13, 1997. This report diagnosis the applicant with PTSD, major depression recurrent, severe and panic disorder with agoraphobia. This diagnosis was based on [REDACTED] clinical interview, and his interpretation of a Minnesota Multiphasic Personality Inventory (MMPI) as well as a Post Traumatic stress Diagnostic Scale (PDS). Both tests were administrated by [REDACTED] (or his associates). The objectivity of this provider is unknown to the undersigned. [REDACTED] office was contacted for the purpose of collecting any pertinent collateral data, but such data has not been provided. Of note, the narrative of [REDACTED]'s evaluation reported that the applicant's "present illness is a continuation of emotional reaction to traumatic stressors encountered during the Vietnam war." Mr. Maxwell then reported that the applicant had recently experienced increased anxiety, racing thoughts, nervousness, temper, stress, loneliness, intrusive thoughts, flashbacks, depression, sexual problems, work problems, family problems, self esteem problems, health problems, fears, problems making decisions, nightmares, problems with appetite and crying spells. Mr. Maxwell's evaluation seems to indicate that these symptoms (some of which may be post-traumatic in nature) are new experiences for the patient, which is inconsistent with the applicant's claim he has suffered from PTSD since 1968.

5. Discussion

a. [REDACTED] entered the USMC on 05 Sep 1967, completed basic training in San Diego, California then advanced rifleman training in Camp Pendleton, California. He left for Vietnam approximately five months after joining the marine corps. Within four months of arriving in Vietnam, [REDACTED] had committed the first of five total UCMJ offenses he committed in a 22 month military career. He left the military in April 1970 with an undesirable discharge at his own request, to avoid facing court-martial for desertion charges.

b. Since 1992, [REDACTED] has applied three times for an upgrade in the status of his discharge. He initially blamed the behaviors that lead to his undesirable discharge on brain damage from an undocumented malarial illness. His subsequent applications have blamed PTSD, also undocumented in his military medical records. Of

note, there is no mention of any psychiatric illness in his active duty medical records, nothing upon entry (either by the patient's report or by medical examination), nothing documented during his period of active duty service and nothing in his discharge medical evaluation. Mr. Nichols discharge SF 89, report of medical history is conspicuously absent from his file. His discharge SF 88, report of medical examination is included in the file, and it clearly documents no objective evidence of psychiatric illness.

c. [REDACTED]'s most recent application includes a psychological evaluation dated 11 Oct 1997, which documents the diagnoses of PTSD, Chronic with delayed onset, major depression, recurrent and panic disorder with agoraphobia. The narrative of this evaluation is contradictory at points, first stating that Mr. Nichols' apparent PTSD had existed since his assignment in Vietnam, then stating that the symptoms of this apparent illness had been experienced only recently. Further, this report cited psychological testing that supported the diagnosis of PTSD, but the actual test results were absent from the report. [REDACTED], the mental health provider that evaluated Mr. Nichols and submitted this report was contacted for clarifying information, but did not respond to the inquiry.

d. Post Traumatic Stress Disorder is an anxiety-spectrum disorder that can develop in susceptible patients after they have been exposed to a traumatic event in which they witnessed, or experienced events that involved actual or threatened death/serious injury and that person's response involved intense fear, horror and helplessness. [REDACTED] service record documents service in Vietnam, and action against the enemy. He was wounded in that action. These events may have fulfilled the trauma experience requirements of the PTSD diagnosis. In addition to the experience, however, the diagnosis of PTSD includes persistent reexperiencing of the trauma, persistent avoidance of the stimuli associated with the trauma and numbing of general responsiveness, and persistent symptoms of increased arousal. Documentation of such activity is not seen in Mr. Nichols' file until the 1990's, and the documentation since that time is vague and unconvincing. There is no evidence of this illness documented during the time of active duty service, when the behaviors that lead to his undesirable discharge took place.

e. [REDACTED] contends that prior to his military service, he was a well-received, fully functional member of society. He further contends that his service in Vietnam changed that, and ever since he has not been able to maintain close interpersonal relationships, or stay employed. It is noteworthy that the only proof of healthy pre-morbid functioning he was able to supply the board, after many years of refining his application, were four subjective letters written by friends and family. There was a conspicuous absence of any objective evidence, such as school records, letters from employers prior to his military experience, letters from clergy or other public officials indicating that he was the healthy, functional person he claims to have been prior to his Vietnam experience. [REDACTED] further contends that the marine corps "used him", then "threw me away when they had not further use for me". This is a curious perspective when taken in the context that Mr. Nichols volitionally abandoned his place of duty three times in his brief military career, being declared a deserter the third time.

6. OPINION AND RECOMMENDATIONS:

Although [REDACTED] has submitted one report of evaluation supporting a diagnosis of Posttraumatic stress disorder with delayed onset, the text of that report, and the overwhelming absence of PTSD symptomatology during his military service, or during the 20+ year period immediately after his service does not support a diagnosis of service connected PTSD. There is no evidence in the record supporting PTSD as a reasonable explanation for his undesirable behaviors while on active duty. The evidence of the records, Service, Medical and Veterans Administration, do not support the petitioner's request that his record be corrected to, "honorable discharge".



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